

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 IO-10 FEAE-00 CIAE-00 DODE-00 PM-03

H-02 INR-07 L-02 NSAE-00 NSC-05 PA-01 PRS-01 SP-02

SS-15 USIA-06 AID-05 COME-00 EB-07 FRB-03 TRSE-00

XMB-02 OPIC-03 CIEP-01 LAB-04 SIL-01 OMB-01 AF-06

ARA-06 EA-06 NEA-09 /121 W
----- 018479

R 151714Z APR 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 9417

INFO AMEMBASSY COPENHAGEN

AMEMBASSY DUBLIN

AMEMBASSY LONDON

AMEMBASSY LUXEMBOURG

AMEMBASSY PARIS

AMEMBASSY BRUSSELS

AMEMBASSY ROME

AMEMBASSY THE HAGUE

USMISSION EC BRUSSELS

USMISSION OECD PARIS

C O N F I D E N T I A L SECTION 01 OF 02 BONN 06107

E.O. 11652: GDS

TAGS: EINV, ENRG, EFIN, GW

SUBJECT: FRG POLICY ON INWARD OPEC INVESTMENT

REF: BONN 3476

1. EMBOFF CALLED ON FRG ECONOMICS MINISTRY INVESTMENT
EXPERT VON DEWITZ TO DISCUSS THE DEVELOPMENT OF
GERMAN POLICY ON OPEC INWARD INVESTMENT. VON DEWITZ
EMPHASIZED THAT THE FRG INTENDS TO CONTINUE ITS LIBERAL
POLICY ON CAPITAL FLOWS AND WISHES TO AVOID ANY
PERMANENT LEGAL CHANGES WHICH COULD HAVE IMPLICATIONS
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FAR BEYOND THE SCOPE OF THE CURRENT FOCUS OF CONCERN.

HE NOTED THAT GERMAN POLICY WAS NOW PROCEEDING ON TWO TRACKS; THE EXISTING VOLUNTARY INFORMATION ARRANGEMENT BY THE PRIVATE SECTOR AND A POSSIBLE AMENDMENT TO THE FOREIGN TRADE LAW. IN RESPONSE TO EMBOFF'S QUESTION, VON DEWITZ OUTLINED DETAILS ON CURRENT FRG THINKING WITH REGARD TO CHANGES IN THIS LAW.

2. THE BASIC ELEMENT OF THE PROPOSED AMENDMENT IS AN INTERVENTION PROCEDURE WHEREBY THE FRG HAS THE RIGHT TO STEP IN AND TEMPORARILY BLOCK A SALE TO FOREIGN INTERESTS. UNDER THIS PROVISION, THE FRG COULD AT ANY TIME TRIGGER A MANDATORY DELAYING PERIOD DURING WHICH TIME THE PROPOSED SALE COULD NOT BE MADE FINAL AND THE GOVERNMENT COULD DECIDE TO BLOCK THE SALE PERMANENTLY. IF THE GOVERNMENT HAD NOT ACTED DURING THIS PERIOD, THE DEAL COULD GO AHEAD. THE FRG IS CURRENTLY CONSIDERING A DELAYING PERIOD OF FOUR WEEKS. THE FRG COULD BLOCK A SALE OF MORE THAN 10 PERCENT OF A GERMAN FIRM'S SHARES IF THE FIRM WAS IN THE ECONOMIC INFRASTRUCTURE SECTOR (ENERGY, TRANSPORTATION, TELECOMMUNICATIONS), IF IT POSSESSED HIGH TECHNOLOGY, OR FOR NATIONAL SECURITY REASONS.

3. A KEY FEATURE OF THE PROPOSED AMENDMENT WOULD ENABLE THE GOVERNMENT TO REVIEW AND SUBSEQUENTLY BLOCK A DEAL EVEN AFTER IT HAD BEEN CONSUMATED IF THE GOVERNMENT WAS UNAWARE OF THE DEAL BEFORE IT WAS COMPLETED AND WOULD HAVE BLOCKED IT HAD IT BEEN AWARE OF IT. VON DEWITZ NOTED THAT WITHOUT THIS PROVISION THE FRG MIGHT BE FORCED TO CONSIDER SOME FORM OF REGISTRATION REQUIREMENT. IN ORDER TO OVERCOME JUSTICE MINISTRY CONCERNS ABOUT THE CONSTITUTIONALITY OF THIS RETROACTIVITY PROVISION, THE AMENDMENT WILL PROVIDE THAT THE GOVERNMENT MUST SPELL OUT IN ITS IMPLEMENTING DECREE THE CRITERIA TO BE USED IN APPLYING THIS PROVISION. THE FRG IS ALSO CONSIDERING THE INCORPORATION OF AN EARLY CLEARANCE PROCEDURE IN THIS AMENDMENT WHEREBY A FIRM COULD TRIGGER THE MANDATORY DELAYING PERIOD ON ITS OWN INITIATIVE VERY EARLY IN THE

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R 151714Z APR 75

FM AMEMBASSY BONN

TO SECSTATE WASHDC 9418

INFO AMEMBASSY COPENHAGEN

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 06107

NEGOTIATION PROCESS.

4. ACCORDING TO VON DEWITZ THE FRG HAS NO SPECIFIC TIME
PLAN FOR SUBMITTING ITS LEGISLATIVE PROPOSAL. THE
INTER-MINISTERIAL DISCUSSIONS ARE STILL TAKING PLACE
AND SHOULD BE CONCLUDED IN THE NEAR FUTURE.
THE GOVERNMENT THEN PLANS CONSULTATIONS WITH THE
PRIVATE SECTOR BEFORE THE PROPOSAL IS APPROVED BY
THE CABINET AND SUBMITTED TO THE BUNDESTAG. VON
DEWITZ THOUGHT THAT THE PUBLIC PRESSURE FOR SOME SORT
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OF A LAW HAD DIMINISHED AND HE WAS PLEASED WITH THE WAY

THE VOLUNTARY ARRANGEMENT WAS WORKING THUS FAR,
ESPECIALLY IN THE RECENT BABCOCK-WILCOX CASE
(BONN 5833). HE NOTED THAT ONCE THE FOREIGN TRADE LAW
IS FINALLY AMENDED, THE GOVERNMENT WILL STILL BE
IN NO HURRY TO ISSUE THE NECESSARY IMPLEMENTING DECREE.
SINCE THIS DECREE CALLS FOR RATHER SPECIFIC CRITERIA
IN THE CASE OF RETROACTIVITY, THE GOVERNMENT WOULD
RATHER HOLD OFF AS LONG AS POSSIBLE, THEREBY
AVOIDING THE NEED TO SPELL OUT IN ANY DETAIL THE
TYPES OF INWARD FOREIGN INVESTMENT IT IS SEEKING TO
DISCOURAGE.
HILLENBRAND

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